

## **REMARKS**

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 1-3, 5, 12-14, 16, 23, 29, 29, 31, 37, 39, 43 and 45 have been amended. Claims 4, 6, 15 and 17 were previously withdrawn from consideration, and are currently amended with different claim dependencies in view of the amendments to claims 1-3, 5, and 12-14. The amendments to independent claims 1, 12, 23, 29, 37 and 43 are supported by respective claims 5, 16, 28, 31, 39, and 45, and amendments to claim 43 are further supported at page 8, lines 23-30 of the present specification. Amendments to claims 3, 14, 28, 31, 39 and 45 are supported by at least Figures 4 and 6 of the present application. Amendments to claims 5, 16, 45 are supported by at least Figure 6 of the present application. No new matter has been added.

### **§ 102 Rejections**

Claims 37, 39 and 40 were rejected under 35 U.S.C. §102(b) as being anticipated by Conroy, U.S. 3,742,189. Applicant respectfully traverses this rejection.

Conroy discloses flame elements 38 that are mounted to brackets 40, 42, which are in turn attached to grate end bars 44, 46. A fan assembly 28 causes air to be circulated around the heating coils of a heating means 30 and around the flame elements 38, which air movement cause the flame elements to move to give the illusion of a flame flicker. The flame elements 38 are maintained in a fixed vertical position about a vertical axis and the flame elements 38 are only moved by air from the fan 28. Thus, Conroy fails to disclose both "coupling the flame element to a moving means for moving the flame element from a fixed position about a vertical axis; and moving the flame element with an air flow provided by the blower," as required by claims 37, 39 and 40. Withdrawal of the rejection is respectfully requested.

Claims 1, 3, 7, 12, 14, 18, 23, 25, 29, 31, 32, 37, 39, 40, 43 and 46 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Rasmussen, U.S. 2,055,910. Applicant respectfully traverses this rejection.

Rasmussen discloses a display device in Figures 10 and 11 that includes a front panel 57 with a circular aperture 58 formed therein, and a reflecting member 64 that is visible through the aperture 58. The member 64 includes a plurality of wires 65 secured together at their ends to form a three-dimensional flame shaped structure. The wires 65 may be rotated by a heat motor

69. Rasmussen fails to disclose "a blower configured to provide moving air that alters a position of the flame element," as required by claims 1, 12, 23 and 29, or "moving the flame element with an air flow provided by the blower," as required by claims 37 and 43. Therefore, Rasmussen fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43, and the claims that depend from them. Withdrawal of the rejection is respectfully requested.

Claims 1-3, 5, 7, 11-14, 16, 18, 20, 23, 25, 28, 29, 31, 32, 36, 37, 39, 40, 43, 45 and 46 were rejected under 35 U.S.C. § 102(b) as being anticipated by Pyper, U.S. 1,382,229. Applicant respectfully traverses this rejection.

Pyper discloses a display device having a plurality of panels 15, 16, 17 with an aperture formed there through for visualizing a portion of an animated disk 20. The disk 20 is oriented vertically and is rotatable about a horizontal axis with air flow from a fan 29. The disk may be positioned relative to the aperture in the panels 15, 16, 17 using a linkage assembly 21-25. The linkage assembly 21-25 may move the disk 20 into different horizontal and vertical positions, but the linkage assembly 21-25 is not "adjustable about a vertical axis to move the flame element," as required by claims 1, 12, can not move "the flame element from a fixed position about a vertical axis," as required by claims 29, 37 and 43, and can not rotate "the flame element about a vertical axis," as required by claim 23. Therefore, Pyper fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43, and the claims that depend from them. Withdrawal of the rejection is respectfully requested.

Claims 1-3, 5, 7, 8, 12-14, 18, 19, 37, 39-41, 43, and 45-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Harrison, U.S. 6,461,011. Applicant respectfully traverses this rejection.

Harrison discloses a device for simulating a flame that includes a housing 12 defined by a plurality of panels, a flame element 14, an illuminating member 16, and a circulating means 18 for circulating air in the housing 12. A first end portion 22 of the flame element 14 is secured to an inner housing 20, and a second end portion 24 is free to move in response to the circulated air. The flame element 14 is only movable in response to the circulated air. Therefore, Harrison fails to disclose both "a moving means coupled to the flame element and configured to move the flame element from a fixed position, . . . and a blower configured to provide moving air that alters a position of the flame element," as required by claims 1 and 12, or both "coupling the flame element to a moving means for moving the flame element from a fixed position about a

vertical axis; and moving the flame element with an air flow provided by the blower," as required by claim 37, or both "coupling the flame element to a mechanical structure configured to move the flame element from a fixed position about a vertical axis within the chamber; and . . . moving the flame element with an air flow provided by the blower," as required by claim 43. Therefore, Harrison fails to disclose every limitation of claims 1, 12, 37 and 43, and the claims that depend from them. Withdrawal of the rejection is respectfully requested.

### **§103 Rejections**

Claims 9, 20, 42 and 48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Harrison in view of Butterfield, U.S. 4,965,707. Applicant respectfully traverses this rejection.

As discussed above, Harrison fails to disclose every limitation of claims 1, 12, 37 and 43. Harrison also fails to suggest every limitation of claims 1, 12, 37 and 43. Butterfield fails to remedy the deficiencies of Harrison as it relates to claims 1, 12, 37 and 43. Therefore, claims 9, 20, 42 and 48 are allowable for at least the reason they are dependent on an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 41 and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Conroy in view of Butterfield. Applicant respectfully traverses this rejection.

As discussed above, Conroy fails to disclose every limitation of claim 37. Applicant submits that Conroy also fails to suggest every limitation of claim 37. Butterfield fails to remedy the deficiencies of Conroy as it relates to claim 37. Therefore, claims 41 and 42 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 1-3, 7, 11-14, 18, 22, 43, 45, and 46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Conroy in view of Hess, U.S. 3,742,189. Applicant respectfully traverses this rejection.

Conroy fails to disclose or suggest both "a moving means coupled to the flame element and configured to move the flame element from a fixed position, . . . and a blower configured to provide moving air that alters a position of the flame element," as required by claims 1 and 12, or both "coupling the flame element to a mechanical structure configured to move the flame element from a fixed position about a vertical axis within the chamber; and . . . moving the flame

element with an air flow provided by the blower," as required by claim 43 (see further arguments above).

Hess discloses a blower 60, a flame element, and upper and lower flicker elements 62, 64. However, Hess fails to disclose or suggest a moving means or a mechanical structure that is "adjustable about a vertical axis to move the flame element," as required by claims 1 and 12, or that is configured to move "the flame element from a fixed position about a vertical axis," as required by claim 43. Therefore, Conroy and Hess fail to disclose or suggest every limitation of claims 1, 12 and 43, and the claims that depend from them. Withdrawal of the rejection is respectfully requested.

Claims 8, 19, 20, 47 and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Conroy in view of Hess, and further in view of Butterfield. Applicant respectfully traverses this rejection.

As discussed above, Conroy and Hess fail to disclose or suggest every limitation of claims 1, 12 and 43. Butterfield fails to remedy the deficiencies of Conroy and Hess as they relate to claims 1, 12 and 43. Therefore, claims 8, 19, 20, 47 and 48 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 10 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Conroy in view of Hess, and further in view of Hecker, U.S. 5,426,879. Applicant respectfully traverses this rejection.

As discussed above, Conroy and Hess fail to disclose or suggest every limitation of claims 1 and 12. Hecker fails to remedy the deficiencies of Conroy and Hess as they relate to claims 1 and 12. Therefore, claims 10 and 21 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 8, 9, 19, 20, 26, 27, 33, 34, 41, 42, 47 and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rasmussen in view of Butterfield. Applicant respectfully traverses this rejection.

As discussed above, Rasmussen fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43. Applicant submits that Rasmussen also fails to suggest every limitation of claims 1, 12, 23, 29 and 43. Butterfield fails to remedy the deficiencies of Rasmussen as it relates to

claims 1, 12, 23, 29 and 43. Therefore, claims 8, 9, 19, 20, 26, 27, 33, 34, 41, 42, 47 and 48 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 10, 21 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rasmussen in view of Hecker. Applicant respectfully traverses this rejection.

As discussed above, Rasmussen fails to disclose every limitation of claims 1, 12, and 29. Hecker fails to remedy the deficiencies of Rasmussen as it relates to claims 1, 12, and 29. Therefore, claims 10, 21 and 35 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 23, 25, 43 and 46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rasmussen (Figures 10 and 11) in view of Rasmussen (Figure 2). Applicant respectfully traverses this rejection.

As discussed above, Rasmussen fails to disclose or suggest every limitation of claims 23 and 43, particularly in the embodiment of Rasmussen shown in Figures 10 and 11. There is no further disclosure or suggestion provided by Figure 2 of Rasmussen that remedies the deficiencies of Figures 10 and 11 of Rasmussen as those Figures relate to claims 23 and 43. Therefore, claims 23, 25, 43 and 46 are allowable over Rasmussen. Applicant does not concede the correctness of this rejection.

Claims 26, 27, 47 and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rasmussen (Figures 10 and 11) in view of Rasmussen (Figure 2), and further in view of Butterfield. Applicant respectfully traverses this rejection.

As discussed above, Rasmussen fails to disclose every limitation of claims 23 and 43, even in the combination of Figures 2, 10 and 11. Butterfield fails to remedy the deficiencies of Rasmussen as it relates to claims 23 and 43. Therefore, claims 26, 27, 47 and 48 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 11, 22 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rasmussen in view of Hess. Applicant respectfully traverses this rejection.

As discussed above, Rasmussen fails to disclose every limitation of claims 1, 12 and 29. Hess fails to remedy the deficiencies of Rasmussen as it relates to claims 1, 12 and 29.

Therefore, claims 11, 22 and 36 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 10, 21 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pyper in view of Hecker. Applicant respectfully traverses this rejection.

As discussed above, Pyper fails to disclose every limitation of claims 1, 12 and 29. Applicant submits that Pyper also fails to suggest every limitation of claims 1, 12 and 29. Hecker fails to remedy the deficiencies of Pyper as it relates to claims 1, 12 and 29. Therefore, claims 10, 21 and 35 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

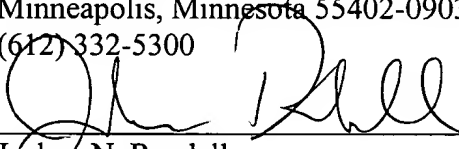
### Summary

In view of the above amendments and remarks, Applicant respectfully requests reconsideration of the application in the form of a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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